Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

ABHIMANYU SWAIN PETITIONER

vs.

DELORES JAN STEVENS RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is the Mississippi Supreme Court's affirmation of trial court judgment ---which failed to consider evidence and genuine issues of material facts surrounding Melissa and were most favorable to Petitioner--- inconsistence with the prerequisites set out to modify child custody?.

2. Did the Mississippi Supreme Court fail to recognize the jurisdiction and constitutional right of Melissa which this Court has consistently supported?

3. Is the Mississippi Supreme Court 's upholding judgment questionable since the court did not consider evidence and genuine issues to determine whether or not the trial court abused its discretion in modifying Melissa's custody?

4. Does the Mississippi Supreme Court's affirmation of trial court decision --- which lacks an opinion and summary judgment --- contradict, conflict, and raise questionable issues with decisions of other state courts and not to mention with this Court?

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v.

DELORES JAN STEVENS **RESPONDENT**

PETITION FOR A **WRIT OF CERTIORARI**

TO THE SUPREME COURT OF MISSISSIPPI

The Petitioner, Abhimanyu Swain, respectfully prays that a writ of certiorari issue to review the decision of the Mississippi Supreme Court (MSC) which affirmed the Warren County, Mississippi Chancery Court's judgment against him for the custody of Melissa Hope Swain in spite of the fact that he was first awarded the custody of the minor child on July 10, 1987 by the Chancery

Court (trial court, **TC**) and the same court allowed him to retain the custody of Melissa on April 16, 1992. However, on August 20, 1992 the same court made findings of fact not supported by evidence and wrongfully determined a material change in circumstances surrounding Melissa when the only information available to the court was that Petitioner was delayed in delivering the minor child to Respondent for the 1992 **very first summer visitation.** Based on this the court unjustifiably found an adverse effect on Melissa, and erroneously modified the order of April 16, 1992 and took custody of Melissa away from Petitioner and granted the same to Respondent.

OPINIONS BELOW

The opinion of the Mississippi Supreme is not presented in this appeal because the MSC has failed to provide an opinion despite Petitioner having made a request to that

court to provide the same. This fact appears in the appendix. p. 1a. and 2a. of this Petition.

JURISDICTION

The Court of Appeal's judgment was entered on December 9, 1993 and is set forth in the appendix p. 3a and 4a. A timely Petition for Rehearing and Opinion was filed on December 20, 1993. The Court of Appeals' denial of the Petition for Rehearing was issued on December 1, 1994 and is set forth in the appendix p 5a and 6a. This Court's jurisdiction is invoked under Title 28, U.S.C. Sec. 12 54 (1).

STATUTES INVOLVED

28 U. S. C. 1738. State and Territorial Statutes and judicial proceedings; full faith and credit.

STATEMENT OF THE CASE

The Petitioner, Abhimanyu Swain ,of Indian decent , became the naturalized citizen of the United States of America in 1976, and married Respondent, Delores Jan Jackson Swain Stevens, an American , on November 11, 1982. **The minor child Melissa Hope Swain, the subject matter of this appeal, was born on 21 August 1984.**

On July 10, 1987 the **first judge**, Warren County, Mississippi, after hearing the testimonies of eighteen (18) witnesses, granted Petitioner a divorce from Respondent on grounds of habitual cruel and inhuman treatment. The same date, the court awarded Petitioner Melissa's custody who was close to three years old (**7a-11a**). **Melissa lived happily in a home in Mississippi with Petitioner and his oldest daughter Amanda** born on 14 May 1976, and shared the love, companionship, and bond of her father and sister.

On October 30, 1991, Petitioner moved to Maryland with his two daughters to work for the

United States Department of Commerce as a senior Environmental Engineer. Petitioner's two children enrolled in Maryland schools, attended church three times a week and became involved in social, educational, and other activities. Respondent filed a **contempt citation** against Petitioner and sought Melissa's custody because Petitioner moved to Maryland. On April 1, 1992, the TC's newly elected judge (**second judge because the previous Chancellor who awarded Melissa's custody to Petitioner for the first time died of a heart attack in office),** after three (3) days of hearing and listening to the testimony of seventeen (17) witnesses, denied Respondent's request for Melissa's custody change and **allowed Petitioner to retain the custody of Melissa for the second time (12a-18a).** However, the Court adjusted Respondent's visitation with Melissa to include an extended summer visitation and specific Christmas visitation. The first visitation of Melissa with her mother was to occur on June 15, 1992 .

Although the April 16,1992 TC order (12a-18a) required that Melissa's scheduled summer visitation with Respondent should begin on June 15, 1992 , Melissa attended school in Maryland from November 2, 1991 through 18 June, 1992, made several new friends both in Church and in school, raised a puppy dog born on 11 February 1992, and expressed her desire to her mother to stay in Maryland instead of traveling to Mississippi for the summer.

However, on July 23, 1992 Respondent filed a contempt citation against Petitioner and sought Melissa's custody by the help of a new attorney who was the law partner of the second judge for many years and who advised Respondent to hire the new attorney during Respondent's visit with the judge in his chamber. Respondent testified at the trial court hearing that she did talk with the judge prior to her filing the contempt citation against Petitioner and the transcript presented to the MSC reflects this fact .

On July 23, 1992 Petitioner's attorney requested Respondent's attorney to avoid court appearance and resolve the visitation issue in the light that Petitioner made a round-trip plane reservation for Melissa to spend the rest of the summer with her mother. Nonetheless, Respondent's attorney did not comply with Petitioner's attorney's request.

On July 30, 1992 Petitioner traveled to Mississippi with his two daughters to deliver Melissa to her mother. However, on July 31, 1992 the Chancellor (second judge), after a brief hearing and receiving testimony from Petitioner, Amanda (oldest daughter), **Respondent, and her husband,** obviously became angry at Petitioner because he was late in delivering Melissa to her mother, made findings of fact not supported by evidence or testimonies, determined a material change in circumstances and found adverse effects on Melissa and erroneously modified the April 16, 1992 order **which the same court allowed Petitioner to**

retain Melissa's custody three and half (3 1/2) months earlier (April 16 through July 311992).

On August 20, 1992 the trial court allowed Petitioner (**19a-23a**) a lesser number of summer visitation days with Melissa than what the same Court had granted to Respondent in the April 16, 1992 Court order (**21a-22a**). In addition, the Court ordered Melissa's Christmas visitation with her father to begin on 26 December of each year (the day after Christmas) which is contrary to what the same Court awarded to Respondent in the April 16,1992 Court order. The Court further ordered Petitioner to post a five thousand dollar ($5,000) bond (**22a**) prior to exercising visitation with Melissa and pay Respondent's attorney fee of seven hundred and fifty dollars ($750).

On September 21, 1993, Petitioner appealed the trial court's August 20, 1992 (21a-25a) decision to the MSC, and filed a notice of Appeal.

On December 9, 1993 the MSC affirmed the lower court decision and **did not provide an Opinion (3a-4a).**

On December 20,1993 Petitioner made a timely request to the MSC to provide an Opinion for rehearing. The MSC did not respond to Petitioner's request for an Opinion; **however, the MSC considered his request for a rehearing**.

On December 1, 1994 the MSC denied Petitioner's request for a rehearing (**5a-6a**). On December 14, 1994 Petitioner requested MSC (**24a**) to provide a summary judgment. **However, as of today the MSC has failed to provide a summary judgment.**

Because of the two lower courts' judgments against Petitioner and the requirement of posting a five thousand ($5,000) bond prior to exercising visitation with Melissa, which Petitioner could not obtain because all financial institutions refused him to post a bond for him and his

inadequate financial conditions resulting from continuous custody battle over Melissa did not permit him to post a cash bond, Melissa has not been to her home in Maryland since 31 July 1992 until today, a period of about two and half years (21/2), the home she has known, lived , shared the love, affection, and bond with Petitioner and his oldest daughter Amanda since birth.

REASON FOR GRANTING THE WRIT

Certiorari should be granted for the following **four reasons**:

I. **The Mississippi Supreme Court's affirmation of trial court judgment which fail to consider evidence and genuine issues of material facts surrounding Melissa and which are most favorable to Petitioner is inconsistent with the prerequisites set out to modify child custody and raise troubling and questionable issues which this Court must specifically and unequivocally decide.**

Petitioner asserts that in Phillips v. Phillips, 555 So. 2d. 698 (Miss 1969) and Albright v. Albright,

437 So. 2d 1003 (1983) three prerequisites are set out to modify child custody. **These emphases are**:

First, the moving party must **prove** by a preponderance of evidence, after the entry of the judgment sought to be modified, that there has been a material change in circumstances which adversely affects the welfare of the child.

Second, if such an adverse change has been shown, the moving party must show by like evidence the best interest and welfare of the child requires the change of custody.

Third, should a court consider a child custody change then the court must very seriously evaluate the following factors governing the child: health, education, which parent has had the continuity of care prior to the separation; which has the best parenting skills and which has the willingness and capacity to provide primary child care; the employment of the parent and responsibilities of that employment; physical and mental health and age of the parents; emotional ties of parent and child; moral

fitness of parents; the home, school and community record of the child; the preference of the child at the age sufficient to express a preference by law; stability of home environment and employment of each parent, and other factors relevant to the parent-child relationship.

In the present case, there is no proof , no credible evidence (physical, psychological, psychiatric, or medical) exist, and none of the three prerequisites are satisfied to legally and factually justify Melissa's custody change.

Because the **MSC disregarded all evidence Petitioner submitted in the brief for review; herein,** he submits some evidence to demonstrate that no material changes in circumstances surrounding Melissa occurred between April 16, 1992 and 31 July 1992, **a period of three and half (3 1/2) months**, and absolutely nothing adversely affected her and her best interests during this period **as she lived with Petitioner and her sister Amanda in Maryland**.

First, the very same trial court allowed Petitioner to retain custody of Melissa on April 16, 1992 (**12a-18a**) after a three day hearing while Melissa lived and attended school in Maryland for about six (6) months.

Second, the senior Pastors and a Deacon of the church where Melissa attended church three times a week since moving to Maryland attested their support for Petitioner which clearly demonstrate that Melissa lived very happily under the love, care, stable home, and protection of Petitioner and the love and companionship of her sister Amanda.

Pastor Charles R. Riggs, communicated to the TC the wholesome, loving, Christian home and fellowship of Melissa with Petitioner and her Church family in Maryland as follows (**25a-27a**):

"This is to attest to the claims of Manyu Swain (Petitioner's nick name is Manyu)that his daughters are actively and happily involved in Greenridge Baptist Church, They are very regular in attendance in choir and other programs for their age group respectively. Having been in the home, having talked with them at church in informal settings, I find them very well adjusted with no signs of abnormal behavior. Several

families have reached out in distinct ways to Manyu, Melissa, and Amanda in particular. They are in full fellowship with the Church since Amanda formally placed her membership here.While I am not privileged to all details of custody dynamics that occurred previous to the move to Maryland, it would be very difficult to conceive that authorities would disrupt the normalcy of the present stable and healthy adjusted function of this family.The observable bonding of Melissa to her father is significant enough to produce very traumatic reaction if forced separation is inflicted upon the family now. The pervasive security and stability in the know present environment is a constant that would have to be weighted against a possible creation of an alien, strange and strained milieu of unknown nurture and succor. The potential for social chaos for Melissa is very real if this present bonding to Manyu is destroyed or retarded seriously. There are no signs that would support any claims of abuse or neglect observable by me."

Jess Edwards, Deacon of Greenridge Baptist Church and Deacon of Melissa and over sixty five (65) members of the Church expressed their desire to the trial court at the reconsideration hearing and to the Court of Appeal by pointing to the welfare, deep concern, and well being of Melissa **(28a-31a)** when the custody of Melissa was changed from Petitioner to Respondent .

"We shared with Manyu the very deep concern over recent disruption in Melissa's life when her custody was awarded to her mother. For the past five years or so, the Court has, on numerous occasions, seen fit to place Melissa in the primary custody of Manyu. In April, the decision of the Court to allow Manyu to retain permanent custody of Melissa seemed to finally settle the matter. The error Manyu made in delaying Melissa's Court ordered visitation cannot be excused. However, his motivation for the delay was due to his concern for Melissa's completion of the school year and was not meant, in any way, to be in contempt of the Court's order. We can understand that Manyu's action was offensive to the Court. However, we fail to see how this error changes the prior basis on which Manyu had been awarded custody.

Our primary concern is for Melissa's well being. We feel that her removal from a home she happily shared with a loving father and sister could be very traumatic to her. In addition, leaving her friends, her school, and her church places a great burden upon her. We are also concerned with the emotional trauma this separation places upon Amanda who, as an older sister, has been a source of love and support for Melissa. We ask the Court to prayerfully reconsider the decision to place Melissa in her mother's custody and to return her to the father and sister who have loved and provided for her these past years."

Third, Petitioner's supervisor Daniel Farrow faxed a letter (**32a-34a**) on July 30, 1992 the day before the trial court hearing and later mailed it to the trial court judge to include in the reconsideration hearing. In the letter, Mr Farrow expressed these observations for Petitioner's behalf:

"I am Mr. Swain's supervisor at the Pollution Sources Characterization Branch of the National Oceanic and Atmospheric Administration, and am aware of his situation regarding his child custody case. I would like to offer these observations as a character reference for Mr. Swain. I have known Mr. Swain since November 1991 when he came to work for my Branch. During this time, I have observed him to be completely devoted to caring for his two children. He has tried to get his children involved in the local community by encouraging them to join church and school activities, and has put unusual demand on his own work schedule so that he can spend more time with children. He appears to be doing everything in his power to be a good parent and provide a good home environment for his children. .. Finally, I am concerned about the welfare of his children Melissa and Amanda. They are the one's who suffer as a result of Mr. Swain's being pulled about this process, and ultimately are the big losers because of the disruption to their lives and impact on their father 's energy and resources as a result of this draining fight.

Based on the contents of these three examples Petitioner asserts that Melissa was very happy in Maryland with Petitioner and sister, and the circumstances surrounding Melissa were not detrimental to her, and they did not adversely affect her best interests. Therefore the MSC did not meet the first two prerequisites, and consequently the affirmation to trial court judgment is questionable.

The same holds true for the third prerequisite which the MSC failed to consider. This stems from the following facts: Petitioner has been U. S resident since 1971 and a citizen since 1976, holds a Ph.D in engineering and three Masters degree in engineering from three countries (India, Canada and U.S.A), has continuously working for the Federal Government for the past fifteen (15) years, has the best parenting skill because he raised not only Melissa but also Amanda as a single parent, provides the best home and best school for the children, and has allowed his children to get involve in the local community by encouraging them to join church and school activities.

In addition Amanda testified at the TC hearing (the transcript presented to the MSC includes these statements) about the circumstances surrounding Melissa at her home in Maryland. According to Amanda:

Melissa makes straight "A's", Dad helps us both in school works. Melissa had made tons of new friends. We just moved there. I think we should have summer there getting involved with everybody.

When asked to describe where she and Melissa live, Amanda said:

" It's a town house. There is a lot of people. It's very nice. It's close in, woods, wooded area around. There is no harm or anything. There is a playground. There is a bike path that we always run on. Melissa has tons of friends that are always at our house. She has more friends than I do. We go church twice on Sunday and every Wednesday. I sing in church. Melissa plays soccer and softball. My Dad has taken us to Ocean City for the Fourth of July. We also took Melissa for her vacation to Kings Dominion. We are fine. Melissa is happy in Maryland and really didn't want to come to Mississippi.

Petitioner had the continuous care and protection of Melissa for five years prior to custody

change.

In contrast, Respondent dropped out of high school from ninth grade and never went back to school to complete high school. She lives in a trailer with her husband which is isolated from the city and there are no children of Melissa' s age in the neighborhood. Respondent and her husband cannot assist Melissa with her school works. Respondent has not allowed Melissa to participates in any sport activities.

Melissa lives with Respondent and Respondent's husband in the trailer with constant fear of tornadoes and extreme weather conditions. **In brief, Melissa is very unhappy in Mississippi with Respondent.**

The MSC has failed to take into account, adopt and enforce the three prerequisites for Melissa's custody change and consider the profoundest desire of a father to raise his daughter in a stable, loving, harmonious, and safe lifestyle home that Melissa enjoyed with Petitioner and her sister Amanda since birth.

Additionally Petitioner maintains that Respondent did not present any concrete testimony by, lay witness, experts, medical proofs, psychological, or psychriatic tests at the July 31, 1992 TC hearing to support the fact that material changes in circumstances surrounding Melissa occurred between April 16, 1992 and July 31, 1991, during a period of three and half (3 1/2) months, and those circumstances adversely affected her best interests, then. The MSC overlooked these facts.

Therefore, Petitioner asserts that Melissa lived a very happy and enjoyable life with petitioner and sister in Maryland, and her best interests exist in Maryland with petitioner and not with Respondent in Mississippi.

Based on these facts, Petitioner contends that the MSC's decision to affirm TC's decision conflicts with decisions of other state supreme courts, not to mention with decisions by this Court.

In view of this distinct conflict, the Court should grant Petitioner a writ of certiorari to resolve this questionable issue.

II. The Mississippi Supreme Court failed to recognize the jurisdiction and constitutional right of Melissa which this Court has consistently supported.

One element that must be considered is because Melissa lived in Maryland with Petitioner and her sister during 30 October, 1991 and 29 July 1992 , a period of nine (9) months, Petitioner very strongly feels that the TC has violated Maryland's jurisdiction over Melissa pursuant to the Uniform Child Custody Jurisdiction Act (UCCJA) and the MSC overlooked it.

On 22 July, 1992 , nine (9) days before the TC hearing (July 31, 1992), Petitioner wrote a letter to the TC Clerk and informed him about the UCCJA (35a-36a). The letter read :

"In accordance with the Statue of Maryland's Uniform Child Custody and Residence requirement, I am requesting you to send my entire file of the above reference to the Montgomery County, Chancery Court in Maryland. This request is made to you because myself and my daughters are the residence of Montgomery County as of October 29, 1991.

I further request that any petition filed

against me in the Chancery Court by Mrs. Delores Jan Stevens should be denied because your office has no jurisdiction over either on me or on my daughter Melissa Hope swain who lives with me."

The TC's Clerk's office did not respond to Petitioner's request and the MSC disregarded the jurisdiction fact, although the transcript reflects the jurisdiction issue.

To address the question of Melissa's constitutional right, Petitioner submits the following fact:

Melissa wrote a letter to her mother (**37a**) in which she expressed her desire to stay in Maryland instead of traveling to Mississippi for summer 1992: She wrote:

Dear Mom ,

I do not think it's right to take my Dad to court. This is my life that's your life. We both have a life to live now live it. I don't want to come because I want to take care of the puppy.
Love, This is my home.
Melissa

In Bergstrom v. Bergstrom 296 NW2d 490 10 ALR4th 812 (1980) US 10 ALR4th 841, it is stated that " A U. S. citizen, **although still a child, the child can make a choice of residence,** the residence of the child at the time of hearing must play a significant factor in determining the best interest of the child as to where the child should be placed."

Petitioner invited the trial court to talk to Melissa privately in the chambers at the July 31 1992 custody modification hearing. However, the TC declined to talk to Melissa who was available for questioning. Petitioner also asked Respondent's attorney to question Melissa whether or not she wanted to come to Mississippi for summer. The TC as well as the attorney declined to talk to Melissa. **Petitioners brief to the MSC indicated these facts.**

Melissa made her choice to stay in Maryland for summer 1992 because she saw her mother briefly in Mississippi in January 1992, made a lot of new friends in Maryland, and wanted to take care of the new puppy at home.

Additionally, Melissa's choice is her constitutional right which this Court has consistently supported. But the MSC failed to support. **Therefore, the Court should grant this petition.**

III. The Mississippi Supreme Court did not consider evidence and genuine issues to determine whether or not the trial court abused its discretion in modifying Melissa's custody.

The fact that the TC could not find any credible evidences to use against Petitioner, the same court used the contempt issue against him to modify Melissa's custody because he was late in complying with the April 16, 1992 order **(14a)** regarding **Melissa's very first visitation** with Respondent. However, the contempt issue is absolutely separate and distinct from the custody modification issue in that the contempt matter cannot be used as a substitute to demonstrate that a material change in circumstances surrounding Melissa did occur which adversely affected her best interests. **The MSC ignored this fact.**

Petitioner further maintains that when Petitioner , Melissa and Amanda moved to Maryland on October 30, 1991, Respondent brought contempt charge against Petitioner because she could not exercise the biweekly visitation with Melissa as per the July 10, 1987 order (**8a**), and Respondent sought Melissa's custody change. However, on April 16, 1992 when Petitioner's daughters were still living in Maryland and attending school for about six months, the very same TC did not find Petitioner in contempt of the court (**12a-18a**). In this order, TC denied Respondent's request for Melissa's custody change and allowed Petitioner to continue Melissa's custody with Petitioner as **Res Judicate** .

Based on this, **Petitioner argues** that if the TC could not find material change in circumstances surrounding Melissa that adversely affected her best interest during this period, then absolutely no change in circumstances surrounding Melissa could have occurred between April 16, 1992 and July 31, 1992, a period of three and half (3 1/2) months, that adversely

affected her best interest.. **The MSC overlooked this very important piece of evidence.**

Therefore, Petitioner feels that the TC's contempt citation against him has no relevance on Melissa's custody change, and the MSC is clear conflict with other state supreme courts and not to mention with this Court.

Petitioner cannot understand why the MSC overlooked all facts and evidence Petitioner submitted with the brief to determine whether or not the TC abused discretion, especially the following comparison regarding Melissa's visitation:

The comparison reflects abusive discretion of the TC (**second judge, 23a**), actions, and conduct against Petitioner which the MSC overlooked.

These facts can be demonstrated by comparing Melissa's visitation and other issues the same TC awarded to Respondent in the April 16, 1992 order (**16a-18a**) and the visitation and other issues the TC awarded to Petitioner in the August 20,

1992 order (**21a-22a**)). **The comparison is as follows:**

VISITATION

GRANTED TO RESPONDENT (GResp)

GRANTED TO PETITIONER (GPeti)

From June 15 until July 23 of each and every year, **a period of five (5) weeks. (to GResp, 16a)**

From June 20 to July 20 of each year, a period of **four (4) weeks. (to GPeti, 21a)**

From December 23, 1992 until January 2, 1993 and from December 23 until January 2 on every even numbered years thereafter (**to GResp, 16a-17a**)

This visitation schedule will allow Respondent to have Melissa for Christmas at alternate years.

From December 26, 1992 to January 2, 1993 and from December 26 to January 2, 1993 of each and every year there after **(to GPeti, 21a)**

This visitation schedule will never allow Petitioner to have Melissa spend Christmas with him because December 26 is the day after Christmas (21a).

In the April 16, 1992 order when the TC allowed Petitioner to retain Melissa's custody, the court ordered:

Because of the distance involved, Abhimanyu Swain deliver the minor child, Melissa Hope Swain, to Delores Jan Stevens at the beginning of each summer and Christmas Holidays. Delores Jan Stevens be responsible for the return of the minor child to the home of Abhimanyu Swain in Damascus, Maryland (**17a-18a**).

In the August 20, 1992 trial court order when the court took Melissa's custody away from Petitioner, the court ordered:

That Abhimanyu Swain is **Responsible for and to pay for all travel arrangements for said visitation** to include picking up the child in Vicksburg and returning the child to her mother after said visitation (**21a**).

In the April 16, 1992 order the trial court did not award attorney fee to Petitioner despite he won the case. Respondent required posting no bond prior to exercising visitation with Melissa.

However, in the August 20, 1992 trial court order , the court ordered Petitioner to pay one thousand dollars ($1,000) (23a) attorney fee to Respondent's attorney and the court asked Petitioner to post five thousand dollars ($5,000) bond prior to exercising visitation with Melissa (22a).

Petitioner leaves these questionable matters to the discretion of this Court and to ascertain whether or not the TC's decision to change Melissa's custody was a direct effort **to punish him.**

If indeed it was a punishment action, then the TC not only punished Petitioner but also punished Melissa and Amanda. Punishing two innocent precious children

can be viewed beyond the shadow of a doubt as the most gruesome, cruel, and inhuman form of punishment that a trial court could ever inflict upon innocent children. The petitioner is not just the loser but Melissa and Amanda are losers as well.

In Ashwell v. Ashwell, 135 Ca. App. 2d 211, 286 P.2d 983, 987, (1955), the California Court of Appeals stated: "..... where custody of children shall lie the courts are not engaged in disciplinary action to punish parents for their shortcomings as individuals.....". In Houde v. Beckmeyer, 116 N. H. 719, 366 A. 2d 504, 506 (1976), the New Hampshire Supreme Court stated: " The award of custody is not a devise to reward or punish parents,.....". In Whitefield v. Whitefield, 295 So. 2d 501, 502 (C. A. La. 1974), the Louisiana Court of Appeals stated: " The purpose of a custody determination is not to punish a parent for any past misconduct, it is rather to serve the best interest of the children of the marriage." In Crowson V. Moseley, 480 So. 2d

1150 (MS 1985) wherein it is clearly recited that there should never be a modification of custody just to punish an offending party."

Therefore, Petitioner maintains **that questionable issues exist relative to the MSC affirmation of TC decision and it is this Court's discretion to resolve them by granting this petition.** .

IV. The MSC did not provide an opinion and summary judgment despite Petitioner having made a request for these documents. The MSC's affirmation decision contradicts, conflicts, and raises questionable issues with decisions of other state courts and not to mention with this Court.

Petitioner believes that the MSC did not carefully read, consider , and review his brief. This stems from the fact that on November 30, 1993 Petitioner requested the MSC to expedite his case **(38a) because he has not been allowed to visit with Melissa since July 31, 1992, a period of over a year, due to the**

bond requirement. However, **nine (9) days later when a certified letter from Maryland to Mississippi takes about four (4) days to reach the destination,** on December 9, 1993 the MSC affirmed the trial court judgment and failed to provide an opinion

On December 20, 1993 Petitioner requested the MSC to provide him with an Opinion (**1a**) and requested for additional appeal rights, including a rehearing. The MSC did not respondent to Petitioner's request for an opinion.

On November 24, 1994 Petitioner mailed a certified letter with return receipt and asked the MSC to expedite the rehearing. **Six days later**, on December 1, 1994 the MSC denied Petitioner's request for a rehearing.

On December 14, 1994 Petitioner mailed a certified letter (**39a**) and requested the MSC to provide him with a summery judgment. **As of today, the MSC did not answer to Petitioner's request for a summary judgment.**

If this Court cannot judge a state court's actions and conduct against a Petitioner, who is determined to raise Melissa, and cannot evaluate the love, concern, care, and protection of a father for his daughter, then there is no stimulating desire for a citizen of the United States of America to have confidence in the judiciary system of a state court and to seek justice in this great country.

Therefore Petitioner **seeks justice from this Court if not for his sake at least for the sake of Melissa and Amanda** who are as of this day devastated by the separation and the actions and conducts of the trial court and the MSC against them and they cannot understand why two sisters are separated thousands of miles apart.

In fact , Amanda sees daily the empty room just opposite to her room where Melissa lived, played, shared her companionship and bond, laughed, and enjoyed her life with Amanda.
It tears Amanda apart as she sees Melissa's

belongings each day which are still there the way Melissa left them approximately two and half (2 1/2) years ago.

In view of the evidence presented with this petition and the clear conflicts of issues which the MSC failed to resolve, this Court should grant this petition.

CONCLUSION

For the reasons set forth in the "REASONS FOR GRANTING THE WRIT", the petition for a writ of certiorari should be granted.

Respectfully submitted,

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DATED: February 24, 1995.